



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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May 6, 2011

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

Proposed to Adopt Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*. Regulation 1685.5 prescribes the manner in which the Board “shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table,” as required by Revenue and Taxation Code (RTC) section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14), and prescribes the use tax table for calendar year 2011.

PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 207, 5901 Green Valley Circle, Culver City, at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed adoption of Regulation 1685.5.

AUTHORITY

RTC section 7051.

REFERENCE

RTC section 6452.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

Current Law

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board’s duty to estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person’s adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

There are no comparable federal regulations or statutes to Regulation 1685.5.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of proposed Regulation 1685.5 will enable the Board to fulfill its duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years. The Board's use tax tables will enable taxpayers to choose to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), instead of calculating and reporting their actual unpaid use tax liabilities (as discussed above). And, the proposed regulation will not impose any new taxes, it will not change any exemptions or exclusions, and it will not even require taxpayers to use the Board's use tax tables to report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of proposed Regulation 1685.5 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of proposed Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of proposed Regulation 1685.5 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed regulation should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 21, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt proposed Regulation 1685.5. The Board will only consider written comments received by that time.

May 6, 2011

**AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF
PROPOSED REGULATION**

The Board has prepared an underscored version of the text of proposed Regulation 1685.5 illustrating its express terms and an initial statement of reasons for the adoption of the proposed regulation. These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the Initial Statement of Reasons are also available on the Board's Website at www.boe.ca.gov.

**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt proposed Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts proposed Regulation 1685.5, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Diane G. Olson", written in a cursive style.

Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

Initial Statement of Reasons
Proposed Adoption of
California Code of Regulations, Title 18, Section 1685.5,
Calculation of Estimated Use Tax - Use Tax Table

SPECIFIC PURPOSE AND NECESSITY

Prior Law

Revenue and Taxation Code (RTC) section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

Current Law

Senate Bill No. (SB) 86 (Stats. 2011, ch. 14) was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate

the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board's duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

During its April 26, 2011, meeting, the Board determined that it was necessary to adopt Regulation 1685.5 for the specific purposes of implementing, interpreting, and making specific the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table" and prescribing the use tax table for calendar-year 2011.

There are no comparable federal regulations or statutes to Regulation 1685.5.

DOCUMENTS RELIED UPON

The Deputy Director for the Board's Sales and Use Tax Department, Jeffrey McGuire, submitted a memorandum dated April 15, 2011, to the Board Members for consideration at the April 26, 2011, Board meeting, which contained staff's request for the Board's authorization to begin the formal rulemaking process to adopt Regulation 1685.5. The Board relied upon the April 15, 2011, memorandum, the exhibits to the April 15, 2011, memorandum, which illustrate the text of proposed Regulation 1685.5 and identify the sources of the data the Board will use to perform the calculations prescribed by Regulation 1685.5, and comments made during the April 26, 2011, discussion of the April 15, 2011, memorandum in deciding to propose the adoption of Regulation 1685.5.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt proposed Regulation 1685.5 at this time or, alternatively, whether to take no action at this time and seek additional input from interested parties. However, the Board decided to begin the formal rulemaking process to adopt the proposed regulation at this time in order to comply with deadlines for including the Board's use tax table in the instructions to the FTB's 2011 income tax returns.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of proposed Regulation 1685.5 will enable the Board to implement the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by

July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” and prescribe the use tax table for calendar-year 2011. Eligible taxpayers will have the option to use the Board’s use tax tables to estimate their use tax liabilities for calendar-year 2011 and subsequent years, but taxpayers may also choose to continue to calculate and report their actual unpaid use tax liabilities (as discussed above). Furthermore, the adoption of the proposed regulation will not impose any new taxes, and it will not change any exemptions or exclusions. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

Proposed Text of
California Code of Regulations, Title 18, Section 1685.5

Section 1685.5. Calculation of Estimated Use Tax - Use Tax Table.

(a) In General.

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

(b) Definitions and Data Sources.

(1) AGI Ranges. The use tax table shall be separated into eight (8) AGI ranges as follows:

(A) AGI less than \$20,000;

(B) AGI of \$20,000 to \$39,999;

(C) AGI of \$40,000 to \$59,999;

(D) AGI of \$60,000 to \$79,999;

(E) AGI of \$80,000 to \$99,999;

(F) AGI of \$100,000 to \$149,999;

(G) AGI of \$150,000 to \$199,999;

(H) AGI more than \$199,999.

(2) Use Tax Liability Factor or Use Tax Table Percentage. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) Total Personal Income. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) Total Spending at Electronic Shopping and Mail Order Houses. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) Percentage of Income Spent on Electronic and Mail Order Purchases. The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) Average State, Local, and District Sales and Use Tax Rate. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) Calculation of the Estimated Use Tax Liability.

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying \$10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) Use Tax Table Format.

(1) The use tax table for calendar year 2011 shall provide as follows:

<u>Adjusted Gross Income</u>			<u>Use Tax Liability</u>
<u>(AGI) Range</u>			
<u>Less Than \$20,000</u>			<u>\$7</u>
<u>\$20,000</u>	<u>to</u>	<u>\$39,999</u>	<u>\$21</u>
<u>\$40,000</u>	<u>to</u>	<u>\$59,999</u>	<u>\$35</u>
<u>\$60,000</u>	<u>to</u>	<u>\$79,999</u>	<u>\$49</u>
<u>\$80,000</u>	<u>to</u>	<u>\$99,999</u>	<u>\$63</u>
<u>\$100,000</u>	<u>to</u>	<u>\$149,999</u>	<u>\$88</u>
<u>\$150,000</u>	<u>to</u>	<u>\$199,999</u>	<u>\$123</u>
<u>More than \$199,999 -Multiply AGI by 0.070% (.0007)</u>			

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6452.1, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1685.5

Title: 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Preparation: Brad Heller

Legal Contact: Brad Heller

Board proposes to adopt Regulation 1685.5, *Calculation for Estimated Use Tax – Use Tax Table*, for the specific purpose of implementing the new use tax table provisions of Revenue and Taxation Code section 6452.1.

History of Proposed Regulation:

May 6, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 26, 2011	Notice to OAL
April 26, 2011	Business Tax Committee, Board Authorized Publication (Vote 3-2)

Sponsor: NA

Support: NA

Oppose: NA